

Internal Revenue Service

Number: **201448018**

Release Date: 11/28/2014

Index Number: 2601.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B4

PLR-126815-14

Date:

September 02, 2014

Legend

Trust 1 =

Trust 2 =

Wife =

Husband =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State =

Court =

State Statute =

Beneficiaries =

Dear _____ :

This letter responds to a letter from your authorized representative dated July 10, 2014, requesting a ruling on the generation-skipping transfer (GST) tax consequences of the proposed consolidation of Trust 1 and Trust 2.

The facts and representations submitted are summarized as follows:

Article 8 of Wife's will provides for the creation of Trust 1. On Date 1, a date prior to September 26, 1985, Wife died and Trust 1 became irrevocable.

Article 8(a) of Wife's will describes the property used to fund Trust 1. Article 8(b) provides that, during the life of the trust, the trustee shall accumulate the net income or pay to or apply so much of the net income to the use of the testator's grandchildren (including grandchildren born after the execution of testator's will and after testator's death) in such amounts as the trustee, in his sole and absolute discretion, shall deem advisable. The trustee is not required to make any distribution, but if he should decide to do so, he must make payment simultaneously and equally to or for each grandchild of the testator living at the time of the distribution.

Article 8(c) of Wife's will provides that, upon the death of any grandchild of the testator after the testator's death, his share of the principal of the trust shall be paid and distributed to or for the benefit of any one or more persons or corporations (outright, in trust or otherwise) as such grandchild of the testator may appoint by specific reference thereto in his will admitted to probate; provided, however, that such grandchild shall have no power to appoint the same or any part thereof to himself or to his estate or to his creditors or to the creditors of his estate. If a grandchild does not validly and effectually exercise his special power of appointment, then such part as he shall not effectually appoint is to be distributed *per stirpes* and in fee to the grandchild's then living descendants, and if none, unto the testator's living descendants, *per stirpes*. A grandchild's share is defined as that proportion of the principal of the trust represented by the fraction of which the numerator is one and the denominator is the number of grandchildren of the testator living at the time immediately preceding the death of the grandchild.

Article 8(d) of Wife's will provides that the trust shall terminate upon the death of the last to die of the grandchildren of the testator who were living at the time of the testator's death.

Article 8(e) of Wife's will provides that if no grandchildren of the testator should survive the testator or if at the termination of the trust there should remain any principal undisposed of under the foregoing provisions, then such undisposed of part of the trust

principal shall go to those persons entitled to inherit personal property from the testator under State statutes of descent and distribution then in effect, and in the proportions provided by said statutes, in the same manner as if the testator had then died without a valid will.

Article 10 of Husband's will provides for the creation of Trust 2. On Date 2, a date prior to September 26, 1985, Husband died and Trust 2 became irrevocable.

Article 10(a) of Husband's will describes the property used to fund Trust 2. Articles 10(b), (c), (d) and (e) of Husband's will are substantially identical to Articles 8(b), (c), (d) and (e) of Wife's will.

On Date 4, Court issued an order modifying Trust 1. On Date 5, Court issued an order modifying Trust 2. The modifications of Trust 1 and Trust 2 relate solely to the trustee provisions and have no effect on any dispositive provision of either Trust 1 or Trust 2.

State Statute provides, in pertinent part, that after notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not materially impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

The trustees of Trust 1 and Trust 2 propose to merge Trust 1 with and into Trust 2, with Trust 2 being the surviving trust in the merger. On Date 6, Court issued an order approving the merger of Trust 1 and Trust 2 contingent on issuance of a favorable response from the Internal Revenue Service to this request for a private letter ruling.

The trustees of Trust 1 and Trust 2 represent that the beneficiaries of Trust 1 are the same as the beneficiaries of Trust 2 (Beneficiaries), both before and after the proposed merger, and that no additions have been made to the principal of either Trust 1 or Trust 2 after September 25, 1985.

RULING REQUESTED

You have requested a ruling that the proposed merger of Trust 1 with and into Trust 2 will not subject either Trust 1 or the newly merged Trust 2 to federal generation skipping transfer (GST) tax under § 2601 by forfeiting the exempt status that Trust 1 and Trust 2 enjoy by virtue of becoming irrevocable prior to the effective date of Chapter 13 of the Internal Revenue Code.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST which is defined under §2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii) provides that any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in settlor's gross estate under § 2038 or 2042 if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer. Furthermore, a modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered a shift in a beneficial interest in a trust.

Section 26.2601-1(b)(4)(i)(E), Example 6, considers a situation where, in 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, and A's issue. In 1983, Grantor's spouse also established a separate irrevocable trust for the benefit of the same child and issue. The terms of the spouse's trust and Grantor's trust are identical. In 2002, the appropriate local court approved the merger of the two trusts into one trust to save administrative costs and enhance the management of the investments. The merger of the two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the merger. In addition, the merger does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust that resulted from the

merger will not be subject to the provisions of chapter 13.

In the present case, Trust 1 and Trust 2 were irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to either Trust 1 or Trust 2 after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the trusts are not subject to the GST tax.

The proposed merger is similar to Example 6 in § 26.2601-1(b)(4)(i)(E). State Statute permits a trustee to merge the assets of the trust into a single trust estate after giving notice to the qualified beneficiaries and provided that the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. You have represented that the beneficiaries of Trust 1 and Trust 2 are the same persons, both before and after the proposed merger. Further, before the proposed merger, Trust 1 and Trust 2 were to terminate on the date of death of the last to die of the Beneficiaries; after the proposed merger, the surviving Trust 2 will terminate on the date of death of the last to die of the Beneficiaries. Thus, the surviving Trust 2 will terminate on the same date as Trust 1 or Trust 2 would have terminated absent the proposed merger. Under these circumstances, the proposed merger will not shift a beneficial interest to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the proposed merger will not extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts.

Accordingly, based on the facts submitted and the representations made, we conclude that the proposed merger of Trust 1 with and into Trust 2 will not affect the grandfathered status of these trusts and will not cause any distributions from Trust 1 or the surviving Trust 2 to be subject to GST tax, provided there are no post-merger additions to the surviving Trust 2.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: